

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Friday, August 16, 2002 – 9:00 a.m. – Room 405 State Capitol

Members Present:

Mr. Alan L. Sullivan, Chair
Mr. Kevin J. Worthen, Vice Chair
Rep. Patrice M. Arent
Mr. Michael E. Christensen
Rep. Greg J. Curtis
Mr. Byron L. Harward
Mr. Morris D. Linton
Judge Jon M. Memmott
Sen. John L. Valentine

Members Absent:

Sen. Mike Dmitrich
Dr. Michael Petersen
Chief Justice Christine Durham
Sen. David L. Gladwell
Mr. Robin Riggs
Speaker Martin R. Stephens
Ms. Kristine Strachan

Staff Present:

Mr. Jerry D. Howe, Research Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Jennifer Markham, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the commission secretary, Cassandra Bauman, at 538-1032.

1. Committee Business

Chair Sullivan called the meeting to order at 9:13 a.m. Chief Justice Durham, Dr. Peterson, Speaker Stephens, and Ms. Strachan were excused from the meeting.

Rep. Arent requested, and several other commission members agreed, that the minutes include more detail regarding commission discussions.

MOTION: Sen Valentine moved to approve the minutes of the June 14, 2002 meeting. The motion passed unanimously with Mr. Harward absent for the vote.

2. Article IX, Legislative Apportionment

Mr. Howe discussed the redistricting process, with an emphasis on which states authorize the Legislature to draw the new districts and which states have created a redistricting commission to draw new districts. Traditionally, he said, state legislature's have been responsible for the redistricting process, but that in the past several years, redistricting commissions have been gaining in popularity. Both Arizona and Idaho have recently created a redistricting commission, he said. According to the National Conference on State Legislature's, Mr. Howe reported that a total of twelve states, Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Missouri, Montana, New Jersey, Ohio, Pennsylvania, and Washington provide that a redistricting commission is responsible for drawing legislative districts. Congressional districts are drawn by a redistricting commission in Arizona, Hawaii, Idaho, Montana, New Jersey, and Washington.

Mr. Howe reported that those who argue for Legislative control of redistricting contend that state legislators are more accountable to the public than any other entity or organization, that redistricting is both an inherent legislative function as well as an inherently partisan political activity. Those who argue

against legislative control note that the public lacks confidence in a legislature's ability to redistrict because an inherent conflict of interest exists when legislators draw their own districts. These conflicts produce suspicion because of the opportunities for mischief that exist in the redistricting process. Moreover, he reported that it has been argued that a redistricting commission can be more effective and efficient since a redistricting commission usually contains between five and fifteen members, rather than the hundred or more that are involved when the entire legislature is responsible for the process.

Mr. Howe also reported that those who favor an independent commission contend that commissions reduce conflicts of interests, especially when drawing legislative districts, that they reduce partisan political influence thus producing less partisan districts, and public confidence is increased as a result of the independent commission. Those who oppose independent commissions counter that redistricting commissions are not accountable to the public and that partisan politics are not removed when commission are in charge of the process.

Chair Sullivan requested additional research on the issue of whether legislature's or redistricting commission's generally produce redistricting plans that are more or less likely to result in litigation. The initial question that interested the commission was a supposition that Utah redistricting plans have not been legally challenged, yet the plans of redistricting commissions have been challenged. Although members of the constitutional revision commission understand that a myriad of factors, including the established criteria adopted by the redistricting entity, as well as the financial resources of those negatively impacted by the plans contribute to litigation decisions, the commission remains interested in whether a comparison of litigation rates between other state legislature's and redistricting commission's can provide any value to an analysis regarding which entity is best suited to redistrict. Staff was therefore requested to provide litigation statistics, including, to the extent possible, the established redistricting criteria, the grounds of the suit, and whether the suit was successful.

Sen. Valentine explained that from his experience and after weighing the advantages and disadvantages of both the redistricting commission model and the legislative model, that he could not identify a compelling reason to adopt an independent redistricting commission in the state of Utah.

Rep. Arent indicated that a trend is being established toward the creation of independent commissions. In Utah, public opinion polls indicate a lack of public confidence in the current system, and there is a perceived conflict of interest in the legislature drawing its own plans. There are many good reasons to consider a change to the current system, she said.

Rep. Curtis stressed that a handful of states does not constitute a trend. Approximately 75 percent of the states have legislature's responsible for redistricting, he said. Utah public opinion polls indicate a concern with congressional plans, he said, not legislative plans, yet only seven states have an independent commission to draw congressional plans.

Judge Memmott indicated that it would be hard to find qualified members to serve on independent commissions. The nature of redistricting would indicate that enormous pressures would be placed on those who served, and the time between redistricting cycles would likely result in a new group of individuals at each cycle. The Legislature is probably more informed on redistricting than a commission comprised of

non legislators would be, and he also indicated that legislative staff adds value and expertise to the redistricting process, which would likely not be the case if an independent commission were created once a decade for one year to draw redistricting maps. Another issue to consider, he explained, is that the Legislature is scrutinized by the press. The legislature's redistricting process is open to the public, which, if established, a redistricting commission should also face the same reporting and media coverage as the Legislature. Whether the press would be as interested in the redistricting plans created by an independent commission as it currently is with the redistricting plans of the Legislature is an interesting question, he said.

Rep. Arent stated she understood the frustration in the public over redistricting. The issues are complicated, standards and criteria are not established, and a committee comprised of all legislators decides every issue, from what, if any, criteria will be followed to what the recommendations for each house, senate, and congressional district will be. The legislature does its redistricting without establishing legal standards, she said, and no criteria is required by the state's constitution or by statute so that at each redistricting cycle the legislature decides all the issues. This process has produced and will continue to produce a substantial lack of public confidence in redistricting, she said. She further commented that this process could surely be improved.

Mr. Worthen clarified a distinction that the Speaker of the House and President of the Senate decide how many legislators will serve on the redistricting committee and who those members will be. The individuals so selected, then decide what, if any criteria will be established.

Mr. Linton suggested that the commission explore a redistricting committee consisting of representatives from the Legislature and the public. He stated that criteria should also be studied for drawing district boundaries.

Chair Sullivan emphasized that more work needs to be done and requested staff provide more information on the quantity and type of lawsuits filed against the plans of independent commission and plans of the legislature. It would also be helpful to compare the expenses of independent commission's to legislature's, he said.

Mr. Rees indicated that the more criteria a state has, the more open it becomes for lawsuits. Mr. Howe agreed emphasizing that, for the lawsuit data to be valuable, information regarding both the criteria and the legal grounds of the lawsuit would also need to be analyzed.

Judge Memmott stated he thought it would be beneficial to look at criteria. He indicated that criteria specified in statute or the constitution would provide more accountability for whomever provides redistricting to the state. The commission members agreed that the criteria would need to be measurable to be beneficial.

3. Article VI, Section 29, Lending Public Credit

Mr. Rees stated that the current constitutional provisions prohibit the Legislature from authorizing a state or local government from lending its credit or subscribing to stock in aid of any private corporation. He

indicated that the focus of this proposal is on subscribing to stock. The purpose of the proposal to allow, for example, a state-owned University, which develops intellectual property to purchase and own stock in the start up company that acquires the right to the intellectual property. Currently, the University can only sell the rights to the intellectual property and there is a questions about whether the University can acquire an interest in the company that acquires the intellectual property.

Mr. Gary Doxey, General Counsel, Governor's Office, presented two drafts of an amendment which were distributed prior to the meeting. He stated that the second draft better states the position of the Governor's Office. He explained that the drafts are not a strong concern as long as the correct intent is carried through.

Mr. Robert W. Payne, Office of General Counsel, University of Utah, stated the Office of General Counsel and the Technology Transfer Office are in favor of the amendment and prefer the second draft. He explained that intellectual property is exchanged by the Technology Transfer Office through the University Research Foundation. He explained that the foundation sometimes takes stock in exchange for the rights to the intellectual property. He stated that the language of the amendment should include "political subdivision of the state" so that the University would be covered in the provision.

The commission discussed the language of the amendments, including changing who could acquire equity interest on such transactions. Sen. Valentine stated that the political subdivision language may be too broad. He also indicated that the University Research Foundation would not be included if the language included only political subdivisions.

Chair Sullivan requested Mr. Rees to provide options at the next commission meeting.

4. Article VI, Sections 16 - 21, Impeachment

Mr. Rees explained that the current constitutional provision seems to indicate that an impeachment may occur only during a general session or a special session called by the governor. In the case of a theoretical impeachment of the governor, it would seem unlikely, he explained, that the governor would be willing to call the Legislature into a special session to impeach the governor. In short, he said the constitutional scheme requires the legislature to be called into special session by the governor or the legislature must wait until the next general session. The question, he said, is whether the impeachment provision needs to be amended to allow the Legislature to call itself into session for the purpose of impeachment.

Rep. Arent emphasized that this is a good time to deal with this issue, while no impeachment questions are at issue. If the state were to wait until the constitutional question was raised, it would clearly be a difficult problem to resolve, she said.

Mr. Harward suggested that staff prepare possible amendments to the provision for discussion at the next meeting. He suggested that the procedure be similar to that of a veto override session. Judge Memmott suggested using the terms impeachment session, rather than special session so that it is clear the Legislative authority to call itself into session is limited to impeachment issues.

Mr. Rees asked the commission to clarify whether the House of Representatives could call a session for the articles of impeachment, then allow the Senate to call itself into session for the trial or whether both the Senate and the House should simultaneously be in session.

Mr. Doxey stated the Governor's Office is interested in cooperating on this issue.

Chair Sullivan suggested that the Administrative Office of the Court be asked to comment since impeachments also apply to judges, as well as the governor.

5. Other Business / Adjourn

The next meeting is schedule for Friday, September 13, 2002 at 9:00 a.m.

Chair Sullivan adjourned the meeting at 11:41 a.m.